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JUN 21 2007

In re Application of	:	OFFICE OF PETITIONS
Mike Daily et al.	:	
Application No. 09/690,574	:	
Filed: October 17, 2000	:	DECISION ON PETITION
Attorney Docket No. HRL048	:	UNDER 37 C.F.R. §1.181(A)
Title: AUDIO ON LOCATION	:	

This is a decision on the petition pursuant to 37 C.F.R. §1.181(a), filed on April 16, 2007.

BACKGROUND

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed August 9, 2004, which set a shortened statutory period for reply of three months. An after-final amendment was received on October 8, 2004, and an advisory action was mailed on November 30, 2004. An appeal brief was filed on March 3, 2005, however a notice of appeal was not filed preventively thereto. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 10, 2004. A notice of abandonment was mailed on January 23, 2007.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and

Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

#### ANALYSIS

The showing in the present petition is not sufficient to withdraw the holding of abandonment.

Petitioner has asserted that a notice of appeal was timely submitted to the Office on December 30, 2004. Petitioner has submitted a copy of this notice of appeal, and it is noted that it contains both an authorization to charge both a credit card and a Deposit Account, as well as a certificate of mailing dated December 30, 2004.

The electronic file has been reviewed, and it does not appear to contain a copy of this submission.

Certificate of mailing practice provides a mechanism by which Applicants may evince that a paper was timely submitted to the Office, in the event that the correspondence is not received.

Petitioner's submission has been reviewed: with the present petition, Petitioner has informed the Office of the previous mailing and provided an additional copy of the previously submitted correspondence. However, it is noted that the certificate of facsimile transmission was executed by one Scott Davison, and it does not appear that Petitioner has included a statement from this individual. 37 C.F.R. §1.8(b)(3) requires the inclusion of a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. On renewed petition, Petitioner may wish to include a statement from Mr. Davison.

CONCLUSION

Pursuant to the discussion above, the submission is incomplete. It follows that the present petition pursuant to 37 C.F.R. §1.181 must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.181." This is not a final agency action within the meaning of 5 U.S.C §704.

The alternate petition under 37 C.F.R. §1.137(b) will be held in abeyance so as to afford Petitioner the opportunity to file a renewed petition under Rule §1.181. If Petitioner would prefer to seek revival under the unintentional standard, a response to this decision should be submitted with words to this effect.

Any subsequent petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail<sup>1</sup>, hand-delivery<sup>2</sup>, or facsimile<sup>3</sup>. If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225<sup>4</sup>. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



**Paul Shanoski**  
**Senior Attorney**  
**Office of Petitions**  
**United States Patent and Trademark Office**

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1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

3 (571) 273-8300- please note this is a central facsimile number.

4 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.